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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

In re:  
USA SECURITIES, LLC,  
  
Debtor.

Affects:  
☐ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
  
Plaintiff,  
  
v.  
STANLEY E. FULTON,  
  
Defendant.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11 Cases

Judge Linda B. Riegle

**Adversary No. 08-01132**

**FIRST AMENDED COMPLAINT**

Hearing Date: n/a  
Hearing Time: n/a

1 Plaintiff USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), hereby complains as  
2 follows:

3  
4 **I. NATURE OF THIS ACTION**

5 1. In April 2006, USA Commercial Mortgage Company (“USACM”), USA Capital  
6 Diversified Trust Deed Fund, LLC (“DTDF”), and certain related entities were forced to file for  
7 bankruptcy protection as a result of the gross misconduct by certain insiders, namely Thomas A.  
8 Hantges (“Hantges”) and Joseph D. Milanowski (“Milanowski”) (collectively, the “Culpable  
9 Insiders”). Among other wrongful conduct, the Culpable Insiders systematically looted USACM  
10 and DTDF to fund USA Investment Partners, LLC (“USAIP”), an entity that functioned as their  
11 personal “piggy bank”, as well as other entities in which they stood to reap substantial personal  
12 profits.  
13

14  
15 2. In the aggregate, the Culpable Insiders misappropriated tens of millions of dollars  
16 from USACM and DTDF in order: (a) to fund the negative cash flow operations of USAIP and its  
17 vast network of affiliated entities; and (b) to pay USAIP’s obligations to third parties. In this  
18 adversary proceeding, Plaintiff seeks to recover \$2 million that the Culpable Insiders  
19 misappropriated from DTDF and transferred to Defendant in furtherance of their scheme.  
20

21 **II. JURISDICTION / VENUE**

22 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
23 §§ 157 and 1334(b) in that this action arises under, arises in, and/or relates to this bankruptcy case.  
24

25 4. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (H), and (O).

26 5. This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001.

1           6.       The Defendant is subject to personal jurisdiction in this Court.

2           7.       This Court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).

3  
4                                   **III.    PARTIES**

5           **A.    PLAINTIFF**

6           8.       Plaintiff DTDF is a limited liability company organized under Nevada law on or  
7 about February 3, 2000. DTDF offered Nevada investors the opportunity to purchase membership  
8 interests in a fund and thereby invest in loans that USACM originated and serviced on behalf of  
9 DTDF. Upon confirmation of the Third Amended Joint Chapter 11 Plan of Reorganization (the  
10 “Joint Plan”) filed by USACM, DTDF, and three other debtors in Case No. 06-10725 (Docket No.  
11 1799), the DTDF Amended Operating Agreement was enacted and became effective. The Joint  
12 Plan was confirmed by the Bankruptcy Court on January 8, 2007, and became effective on March  
13 12, 2007. The Joint Plan expressly retained DTDF’s causes of action for enforcement by DTDF  
14 pursuant to 11 U.S.C. § 1123(b)(3)(B) upon the effective date of the Joint Plan.  
15

16  
17           **B.    DEFENDANT**

18           9.       Defendant, Stanley E. Fulton (“Fulton”), is an individual residing in the State of  
19 Nevada. Defendant can be served by personal service at 5738 Hedgehaven Court, Las Vegas,  
20 Nevada 89120 or wherever he may be found.  
21

22                                   **IV.    FACTUAL ALLEGATIONS**

23           **A.    BACKGROUND OF USACM, DTDF, AND THEIR DEMISE**

24           10.       In April 2006, USACM and certain related companies collapsed due to the fraud  
25 perpetrated on them by Culpable Insiders. Beginning as early as 1997, the Culpable Insiders  
26

1 employed a pervasive “Ponzi”-like scheme that enabled them to loot and/or misappropriate tens of  
2 millions of dollars from USACM and DTDF. As a result of these wrongful activities, USACM was  
3 insolvent at least as early as December 31, 2001, if not earlier. Eventually USACM and DTDF (the  
4 “Debtor”) filed for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006 (the “Petition  
5 Date”).  
6

7 11. USACM was a mortgage broker and loan servicing company whose primary  
8 business activities were: (a) “originating” short-term loans from investors to real estate developers;  
9 and (b) servicing the loans that it originated by collecting principal and interest from borrowers and  
10 distributing those payments to the investors. USACM earned revenue by charging various fees for  
11 these services, including origination, servicing, and extension fees, although these fees often went  
12 uncollected.  
13  
14

15 12. A significant portion of the fee revenues that USACM actually received was  
16 subsequently misappropriated by the Culpable Insiders. Specifically, the Culpable Insiders  
17 misappropriated USACM’s money to fund entities in which they held an indirect ownership interest  
18 through USA Investment Partners, LLC (“USAIP”), including time-share hotels, real estate  
19 development entities, and technology companies. The Culpable Insiders often earmarked USACM  
20 funds and used USAIP as a conduit for fraudulently transferring these funds to such entities. In  
21 other instances, the Culpable Insiders caused USACM to directly transfer funds to entities in which  
22 USAIP and the Culpable Insiders had an interest. In the aggregate, the Culpable Insiders  
23 misappropriated tens of millions of dollars from USACM to fund their outside business ventures.  
24  
25  
26

1           13. In addition, the Culpable Insiders caused USACM to make scores of other payments  
2 for which it received no benefit and for which it had no underlying obligation. Routinely, the  
3 Culpable Insiders commingled USACM's operating funds with funds held in the USA Commercial  
4 Mortgage Company Collection Trust Account ("Collections Account") and other funds to make  
5 regular interest and principal payments to investors in non-performing loans. These payments were  
6 made to conceal delinquent and defaulted loans from other USACM directors, officers, employees,  
7 shareholders, as well as the investors and regulatory authorities. In turn, this induced existing  
8 investors to maintain or increase their investments with USACM and enticed new investors to  
9 entrust their money to USACM, thereby providing the Culpable Insiders with liquidity to fund their  
10 scheme, and thus, future sources of funds to loot from USACM.  
11

12           14. Ultimately, USACM lost millions of dollars by making principal and interest  
13 payments on loan obligations that it did not owe on behalf of defaulting borrowers. USACM did  
14 not receive any benefit from making these "pre-payments" of interest and principal. Rather, such  
15 payments were expressly forbidden by Nevada law, including NRS 645B.250.  
16

17           15. To provide additional sources of funds to fuel this "Ponzi"-like scheme, the Culpable  
18 Insiders adopted a "fund" business model with the creation of DTDF and USA Capital First Trust  
19 Deed Fund, LLC ("FTDF") in February 2000 and February 2001, respectively. Under the "fund"  
20 model, investors purchased interests in DTDF and/or FTDF, which then acted as lenders in loans  
21 originated and serviced by USACM.  
22

23           16. Beginning at least as early as 2002 and continuing until the Petition Date, the  
24 Culpable Insiders created liquidity in the Collections Account by failing to remit principal payments  
25  
26

1 to DTDF when the loan(s) that it had invested in were repaid. In such situations, Victoria Loob  
2 (“Loob”) took physical possession of checks payable to DTDF and simply stuffed them in her desk  
3 drawer. Internally, the Culpable Insiders referred to the unremitted principal to DTDF as the “held  
4 checks.” As of the Petition Date, the outstanding balance of the held checks was at least \$18.9  
5 million.  
6

7 17. The Culpable Insiders also transferred funds directly from DTDF to the Collections  
8 Account to cover shortfalls. For example, the Culpable Insiders transferred \$11.425 million from  
9 DTDF into the Collections Trust in January 2003. These transfers were in direct violation of  
10 Nevada law and DTDF’s Prospectus, dated June 2, 2003.<sup>1</sup>  
11

12 18. The Culpable Insiders also systematically used DTDF as a vehicle to take certain,  
13 preferred investors out of non-performing loans. In these situations, the Culpable Insiders caused  
14 DTDF to pay in cash the full face value of the preferred investors’ beneficial interests in these  
15 distressed loans in exchange for assignments of the beneficial interests. In many cases, the  
16 beneficial interests DTDF received through these assignments were only worth pennies on the  
17 dollar. In countless examples, the preferred lenders recouped their entire investment while DTDF  
18 was left with nothing more than an interest in worthless investment. The Culpable Insiders  
19 ultimately used DTDF to make tens of millions of dollars of such assignments, causing tens of  
20 millions of dollars in losses.  
21  
22

23  
24 <sup>1</sup> According to the DTDF Prospectus: (i) USACM had sold \$121,524,500 worth of units in the Fund prior to June 2, 2003; (ii)  
25 investors were not offered a fixed rate of return but rather a “flow-through” of the profits generated by DTDF through DTDF acting as  
26 a Direct Lender ins loans generated by USACM; (iii) DTDF would only invest in loans secured by first deeds of trust upon real  
property; (iv) loan-to-value ratios for the loans in which DTDF would become a Direct Lender would not exceed 75% and may be as  
low as 60%; and (v) loan diversification restrictions would be imposed upon the loans invested by DTDF such that no loan would  
exceed \$20 million, no loan would exceed 15% of all loans outstanding at any time, and no more than 25% of the loans outstanding at  
any time would be made to a single borrower or an affiliate of such borrower.

1           19. In addition to abusing DTDF to fuel their “Ponzi”-like scheme, the Culpable Insiders  
2 regularly looted funds from DTDF to fund entities in which they held an indirect ownership interest  
3 through USAIP, including time-share hotels, real estate development entities, and technology  
4 companies. In addition, the Culpable Insiders looted DTDF to pay obligations that USAIP owed to  
5 third parties.  
6

7           20. To conceal these abuses, the Culpable Insiders fabricated a sham loan to 10-90, Inc.  
8 (“10-90”). Although 10-90 was not even created until December 31, 2002, the Culpable Insiders  
9 booked much of their 2002 looting of DTDF as advances on the sham loan to 10-90. From January  
10 2003 onward, the Culpable Insiders continued to loot tens of millions of dollars from DTDF,  
11 ultimately booking more than \$55 million of looting as advances on the loan to 10-90.  
12

13 **B. TRANSFERS FROM DTDF TO DEFENDANT**  
14

15           21. In the late 1990s and early 2000s, Fulton conducted business with several different  
16 entities managed by the Culpable Insiders. First, he invested in loans originated by USACM.  
17 Second, he was a co-lender on several loans with DTDF. Finally, Fulton loaned money directly to  
18 USAIP.  
19

20           22. As a result of Fulton’s business sophistication and his dealings with USACM,  
21 DTDF, USAIP and other related entities, Fulton knew or should have known that DTDF was a  
22 distinct legal entity from USAIP. In turn, he knew or should have known that he was not entitled to  
23 receive several million dollars from DTDF in 2001 and 2002.  
24

25           23. Fulton’s initial exposure to USACM was as an investor in several loans  
26 originated by USACM, including the “Camino Al Norte,” “Sheraton Hotel,” “Double

1 Diamond Ranch/Reno,” “Mason Goodrich Land,” and “Amblamo- The View” loans. As  
2 both an investor in these loans and as a sophisticated businessman, Fulton understood the  
3 risks involved in making these investments. In addition, Fulton knew or should have  
4 known that USACM was merely a mortgage broker, and that neither USACM nor any of  
5 its related entities had any obligation whatsoever to repay any of these loans if the  
6 borrower went into default.  
7

8  
9 24. Fulton was initially exposed to DTDF when he invested in a loan that had previously  
10 been funded by DTDF. Specifically, USACM originated a \$2.25 million loan from DTDF to  
11 American Realty Trust, Inc. (“American Realty”) on December 29, 2000. On January 4, 2001,  
12 Fulton provided an additional \$1.5 million advance to American Realty and the loan documents  
13 were amended to increase the principal amount to \$3.75 million.  
14

15 25. Based upon this experience as a co-lender with DTDF, Fulton knew or should have  
16 known that DTDF merely acted as a normal investor in loans originated by USACM. In turn,  
17 Fulton knew or should have known that DTDF, like Fulton or any other investor, would have  
18 absolutely no obligation whatsoever to make payments to other investors.  
19

20 26. Shortly after Fulton invested \$1.5 million in the loan to American Realty, the  
21 Culpable Insiders approached Fulton to obtain a working capital loan for USAIP. In February 2001,  
22 Fulton loaned \$5 million to USAIP (the “Fulton-USAIP Loan”). The Fulton-USAIP Loan carried a  
23 fourteen percent (14%) interest rate and was evidenced by a Promissory Note dated February 13,  
24 2001 and given by USAIP. The maturity date on the Fulton-USAIP Loan was February 13, 2002.  
25  
26



1           27.     Meanwhile in late 2001, the “Sheraton Hotel” loan went into default, putting  
2     Fulton’s earlier investment in this loan at risk. To ensure that Fulton was repaid, the Culpable  
3     Insiders caused DTDF to pay Fulton the face value of his investment in the loan in exchange for an  
4     assignment of his beneficial interest in the related deed of trust. On November 27, 2001, Fulton  
5     executed the assignment of his interest to DTDF. On November 28, 2001, the Culpable Insiders  
6     caused DTDF to write Fulton a check for \$500,000, the amount of his initial investment in the loan.  
7     Fulton knew or should have known that DTDF had no obligation whatsoever to buy out his interest  
8     in this virtually worthless loan, especially at face value.

9  
10  
11           28.     Shortly thereafter, in February 2002, USAIP defaulted on the Fulton-USAIP Loan  
12     and Fulton’s counsel sent a notice of default to USAIP on February 20, 2002. Subsequently, Fulton  
13     agreed to forbear from exercising his rights and remedies under the Fulton-USAIP Loan documents  
14     until July 15, 2002. Upon information and belief, Fulton executed a Forbearance Agreement in  
15     March 2002 (the “Fulton-USAIP Forbearance”).

16  
17           29.     Upon information and belief, at the time the Fulton-USAIP Forbearance was  
18     executed, the “Double Diamond Ranch/Reno” loan was non-performing. In turn, on March 25,  
19     2002, the Culpable Insiders caused DTDF to write Fulton a check for \$640,732.63 to pay off the  
20     entire amount of outstanding principal and interest on Fulton’s investment in the “Double Diamond  
21     Ranch/Reno” loan. Fulton knew or should have known that DTDF had no obligation whatsoever to  
22     buy out his interest in this non-performing loan, especially at face value.

23  
24  
25           30.     Shortly thereafter, the Culpable Insiders caused DTDF to wire transfer \$1 million to  
26     Fulton as an initial repayment on the Fulton-USAIP Loan on April 15, 2002. The Culpable Insiders

1 caused DTDF to make an additional \$1 million wire transfer to Fulton on May 15, 2002, and a  
2 \$250,000 wire transfer to Fulton on August 16, 2002 (together with the April 15, 2002 wire transfer,  
3 the “DTDF Transfers”) also as partial repayment of principal and interest, respectively, on the  
4 Fulton-USAIP Loan.  
5

6 31. Fulton received the remaining balance due on the Fulton-USAIP Loan from South  
7 Meadows Apartments, LLC (“South Meadows”) and USACM, which repaid \$2 million and \$1  
8 million, respectively. Thus, the Culpable Insiders caused \$3 million of the Fulton-USAIP Loan to  
9 be repaid from two entities (South Meadows and DTDF) who received absolutely no benefit in  
10 return.  
11

12 32. Fulton knew or should have known that DTDF had absolutely no obligation  
13 whatsoever to repay any portion of the Fulton-USAIP Loan. DTDF was not a party to any of the  
14 loan documents or the Fulton-USAIP Forbearance. Nor had DTDF guaranteed the loan or provided  
15 any other security in connection with the loan. Finally, Fulton knew or should have known that  
16 DTDF, an entity that solely functioned as a lender, would not stand to benefit in any way from re-  
17 paying the Fulton-USAIP Loan.  
18

19 33. In addition, Fulton knew or should have known that the DTDF Transfers were made  
20 with the actual intent to defraud DTDF and its creditors. First, DTDF had no obligation to make  
21 these payments and did not receive any benefit from making the DTDF Transfers. Second, the  
22 Culpable Insiders had previously caused DTDF to buy-out Fulton’s interest, at face value, in non-  
23 performing loans to the detriment of DTDF and its creditors.  
24  
25  
26



1           41. Pursuant to 11 U.S.C. § 544(b), DTDF asks the Court to avoid the DTDF Transfers  
2 under applicable state law.

3  
4                           **SECOND CAUSE OF ACTION**  
5                           **(11 U.S.C. § 550(a) and NRS 112.220)**

6           42. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully  
7 set forth herein.

8           43. The DTDF Transfers are avoidable under 11 U.S.C. § 544 and NRS 112.180(1)(a).

9           44. The Trust may recover the value of the DTDF Transfers directly from Fulton as an  
10 initial transferee pursuant to 11 U.S.C. § 550(a)(1) and NRS 112.220.  
11

12  
13                           **THIRD CAUSE OF ACTION**  
14                           **(Unjust Enrichment)**

15           45. DTDF re-alleges and fully incorporates the allegations pleaded above as if fully set  
16 forth herein.

17           46. By making the DTDF Transfers, DTDF conferred a benefit on Fulton.

18           47. Fulton appreciated the benefit in that he: (i) received the DTDF Transfers; and (ii)  
19 knew or should have known that DTDF was making a payment on behalf of USAIP on the Fulton-  
20 USAIP Loan.  
21

22           48. Fulton retained the \$2 million he received in the DTDF Transfers under  
23 circumstances that make retention of the money inequitable. Specifically, the DTDF Transfers were  
24 part of the gross misconduct of the Culpable Insiders in looting DTDF for the benefit of themselves  
25 and their personal “piggy bank,” USAIP. In addition, Fulton willfully accepted the DTDF  
26

1 Transfers, even though: (i) USAIP was unable to timely pay-off the balance of the Fulton-USAIP  
2 Loan; (ii) DTDF had absolutely no obligation to re-pay the Fulton-USAIP Loan and received no  
3 benefit from doing so; (iii) the Culpable Insiders had previously misappropriated DTDF funds to  
4 make payments to Fulton on obligations that DTDF did not owe; and (iv) Fulton knew or should  
5 have known that DTDF solely functioned as a lender.  
6

7  
8 **FOURTH CAUSE OF ACTION**  
9 **(Money Had and Received)**

10 49. DTDF re-alleges and fully incorporates the allegations pleaded above as if fully set  
11 forth herein.

12 50. Fulton has received and/or possesses \$2 million from the DTDF Transfers.

13 51. DTDF is rightfully entitled to the money. The DTDF Transfers were made for  
14 USAIP's benefit and were merely part of the Culpable Insiders' systematic abuse of DTDF.

15 52. In good conscience and equity, Fulton has no right to maintain the \$2 million he  
16 received in the DTDF Transfers. Fulton knew or should have known that he had loaned money to  
17 USAIP, not to DTDF. Yet after USAIP was unable to timely re-pay the Fulton-USAIP Loan,  
18 Fulton willfully accepted partial re-payment from DTDF, even though DTDF had absolutely no  
19 prior connection whatsoever with the Fulton-USAIP loan transaction, had no obligation to repay the  
20 loan, and did not benefit from the loan. Moreover, Fulton had previously received improper  
21 payments from DTDF. The DTDF Transfers were merely part of the gross misconduct of the  
22 Culpable Insiders in looting DTDF for the benefit of themselves and their personal slush fund,  
23 USAIP.  
24  
25  
26

**FIFTH CAUSE OF ACTION  
(NRS 41.580)**

53. DTDF re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

54. In causing the DTDF Transfers to be made, the Culpable Insiders took \$2 million from DTDF by theft and/or other offense(s) constituting a crime against property.

55. Fulton received, possessed, and/or withheld the \$2 million.

56. Fulton received, possessed, and/or withheld the \$2 million: (i) knowing that the Culpable Insiders misappropriated the funds from DTDF by theft and/or other offense(s) that constitute a crime against property; or (ii) under such circumstances as should have caused a reasonable person to know that the Culpable Insiders misappropriated the funds from DTDF by theft and/or other offense(s) that constitute a crime against property.

57. Accordingly, the Trust may recover treble damages from Fulton under NRS 41.580.

**VI. PRAYER FOR RELIEF**

WHEREFORE, DTDF respectfully request that the Court enter judgment as follows:

- (a) Avoiding each of the DTDF Transfers;
- (b) Directing Fulton to repay the value of the DTDF Transfers to DTDF;
- (c) Directing Fulton to pay to DTDF all pre- and post-judgment interest on the DTDF Transfers at the maximum rate allowable by law and/or equity;
- (d) Directing Fulton to pay DTDF's costs of court;
- (e) Directing Fulton to pay DTDF treble damages and reasonable attorney's fees in accordance with NRS 41.580; and

(f) Awarding DTDF such other relief that this Court deems just and proper.

Dated: April 13, 2009.

**DIAMOND MCCARTHY LLP**

**LEWIS AND ROCA LLP**

By: /s/ Michael J. Yoder  
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